

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEFF GENE GREEK,

Defendant.

Case No. 14-cr-00605-TEH

**ORDER DENYING MOTION TO
STAY**

This matter comes before the Court on the Government's motion to stay consideration of Defendant Joseff Gene Greek's application for an order under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. The Government seeks a stay pending the Supreme Court's resolution of *Beckles v. United States*, for which a petition for a writ of certiorari was granted on June 27, 2016. *Beckles v. United States*, No. 15-8544, 2016 WL 1029080 (June 27, 2016).

A court has the discretion "to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of Cal.*, 593 F.2d 857, 863 (9th Cir. 1979). Greek does not dispute that *Beckles* is such a proceeding, but he correctly observes that, in determining whether to grant a stay, this Court must consider whether "there is even a fair possibility that the stay . . . will work damage to some one else." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). If there is, then a stay would be inappropriate unless the moving party "make[s] out a clear case of hardship or inequity in being required to go forward." *Id.*


To determine whether such a possibility exists in this case, the Court ordered the parties to meet and confer regarding what the revised Sentencing Guidelines range would be if Greek were to prevail on his § 2255 motion. The parties filed a timely response to the Court's order and agree that Greek's revised Guidelines range would be 46-57 months, down from the 84-105 months under which he was sentenced. The Court sentenced Greek

1 to a below-Guidelines range of 72 months, and there is no guarantee that his sentence
2 would be modified even under a lower Guidelines range. On the other hand, it is also
3 possible that the Court would sentence Greek to a sentence below the revised Guidelines
4 range. Greek has already served approximately 20 months, and it is possible that, with
5 good time credits, a new sentence could result in his scheduled release around or before the
6 Supreme Court's decision in *Beckles*. The Court therefore finds a "fair possibility" of
7 prejudice. *Landis*, 299 U.S. at 255.

8 The Government has made no "clear case of hardship or inequity" if this Court were
9 to deny its motion for a stay. *Id.* Accordingly, the motion is DENIED.

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11 **IT IS SO ORDERED.**

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13 Dated: 08/10/16

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15 THELTON E. HENDERSON
16 United States District Judge
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